

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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L & L WINGS, INC.,	:	ECF CASE
	:	
Plaintiff,	:	07 Civ. 4137 (BSJ) (GWG)
	:	
- against -	:	MOVING DEFENDANTS'
	:	LOCAL RULE 56.1 STATEMENT
MARCO-DESTIN INC., 1000 HIGHWAY	:	OF UNDISPUTED MATERIAL
98 EAST CORP., PANAMA SURF &	:	FACTS IN SUPPORT OF MOTION
SPORT, INC. and E & T INC.,	:	<u>FOR SUMMARY JUDGMENT</u>
	:	
Defendants.	:	

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Defendants, 1000 Highway 98 East Corp. and Panama Surf & Sport, Inc., by and through their undersigned counsel and pursuant to Rule 56(b) of the Federal Rules of Civil Procedure and Local Rule 56.1, submit the following Statement of Undisputed Material Facts in Support of Motion for Summary Judgment.

1. Plaintiff, L & L Wings, Inc. ("L & L Wings"), alleges that is a South Carolina Corporation having its principal place of business at 8 East 41st Street, New York, New York. See Complaint at ¶ 1. See Affidavit of Dror Levy, sworn to December 14, 2007 ("Levy Aff.")

¶ 3.

2. Defendant 1000 Highway 98 East Corp. is a Florida corporation having its principal place of business at 10400 Northwest 33rd Street, Miami, Florida. (Levy Aff. ¶ 4).

3. Defendant Panama Surf & Sport, Inc. is a Florida corporation having its principal place of business located at 10400 Northwest 33rd Street, Miami, Florida. (Levy Aff. ¶ 5).

4. Plaintiff, L & L Wings, claims to own, operate, and manage retail stores throughout the United States, specializing in the sale of beachwear, souvenirs, beach toys, chairs, bathing suits, shorts, tee shirts, sunglasses, and other related items. See Complaint ¶ 6.

5. In connection with its claim of ownership, operation, and management of retail stores, Plaintiff claims to use the unregistered service mark, "WINGS" and a decorative trade dress consisting of a "wave sculpture design highlighted with a signature colored neon light combination." See Complaint ¶¶ 6,7,10.

6. According to the Complaint in this case, all four Defendants are accused of improperly using the service mark WINGS and certain "trade dress" in connection with the operation of retail stores specializing in the sale of beach apparel, and in violation of a Licensing Agreement by using the service mark and trade dress after October 31, 2006 which is, according to the terms of the Licensing Agreement, the expiration date of the Licensing Agreement. Complaint ¶ 21. (Levy Aff. ¶ 6)

7. Defendant 1000 Highway 98 East Corp. is a real estate holding company which leases real estate to others. (Levy Aff. ¶ 7)

8. Defendant 1000 Highway 98 East Corp. does not use the service mark WINGS, does not use any trade dress, and does not operate any stores. The leases between 1000 Highway 98 East Corp. as owner/landlord and any tenant do not refer to the service mark WINGS nor any other service mark, nor to any trade dress and do not authorize, license, sublicense, require or permit any tenant or anyone else to use any particular service mark or trade dress. Defendant 1000 Highway 98 East Corp. certainly did not use the service mark or trade dress after October 31, 2006. (Levy Aff. ¶ 8)

9. Defendant Panama Surf & Sport, Inc., provides senior management level consultants for certain stores owned and operated by others. (Levy Aff. ¶ 9)

10. Defendant Panama Surf & Sport, Inc., does not use the service mark WINGS, does not use any trade dress, and is not involved in the day-to-day operation of any stores. The agreements between Panama Surf & Sport, Inc., as the provider of senior management level consultants and any store which is a "customer" of Panama Surf & Sport, Inc., do not refer to the use of the service mark WINGS nor to any other service mark, nor to any trade dress and do not authorize, license, sublicense, require or permit any store owner or store operator or anyone else to use any particular service mark or trade dress. Defendant Panama Surf & Sport, Inc., certainly did not use the service mark or trade dress after October 31, 2006. (Levy Aff. ¶ 10)

11. Defendant 1000 Highway 98 East Corp. did sign the Licensing Agreement "dated for reference purposes as of the 1st day of November 1998" but did not do any of the other acts alleged in the Complaint and did not do any act in violation of the Licensing Agreement. (Levy Aff. ¶ 11)

12. Defendant Panama Surf & Sport, Inc., did sign the Licensing Agreement "dated for reference purposes as of the 1st day of November 1998" but did not do any of the other acts alleged in the Complaint and did not do any act in violation of the Licensing Agreement. (Levy Aff. ¶ 12)

13. Defendant 1000 Highway 98 East Corp. is not aware of any legitimate basis or reason for which it was required to sign the Licensing Agreement. (Levy Aff. ¶ 13)

14. Defendant Panama Surf & Sport, Inc., is not aware of any legitimate basis or reason for which it was required to sign the Licensing Agreement. (Levy Aff. ¶ 14)

15. Assuming the Licensing Agreement to be valid and enforceable, the Licensing Agreement has a termination date of October 31, 2006. Licensing Agreement ¶ 1.3 (Levy Aff. ¶ 15)

16. There is no basis in fact to suggest that either 1000 Highway 98 East Corp. or Panama Surf & Sport, Inc. used the service mark WINGS or the trade dress which are the subject matter of the Complaint at any time. (Levy Aff. ¶ 16)

17. There is no basis in fact to suggest that either 1000 Highway 98 East Corp. or Panama Surf & Sport, Inc., used the service mark WINGS or the trade dress which are the subject matter of the Complaint after the October 31, 2006 expiration of the Licensing Agreement. (Levy Aff. ¶ 17)

Dated: New York, New York
December 14, 2007

Respectfully submitted,

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